

**GIBSON DUNN**

Gibson, Dunn &amp; Crutcher LLP

3161 Michelson Drive  
Irvine, CA 92612-4412  
Tel 949.451.3800  
gibsondunn.com

Blaine H. Evanson  
Direct: +1 949.451.3805  
Fax: +1 949.475.4768  
BEvanson@gibsondunn.com

April 22, 2025

**VIA ECF FILING**

Molly Dwyer  
Clerk of the Court  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: Oracle Int'l Corp., v. Rimini St., Inc., No. 24-5979

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellant Rimini Street writes to inform the Court that the district court has denied Oracle's motion for an indicative ruling. *See Oracle Int'l Corp. v. Rimini St., Inc.*, No. 2:14-cv-01699 (D. Nev. Mar. Apr. 21, 2025), ECF No. 1631 (attached as Exhibit A). The only purported basis for Oracle's motion in this Court to extend the deadline to file its answering brief by 90 days was to give the district court time to rule on that motion. ECF No. 22.1 at 1–3. But the district court agreed with Rimini Street (*see* ECF No. 23; *Oracle Int'l Corp.*, No. 2:14-cv-01699 (D. Nev. Mar. 19, 2025), ECF No. 1624) that Oracle's motion was "procedurally defective" because it "does not seek the relief contemplated by Rule 62.1" of the Federal Rules of Civil Procedure. Ex. A at 3–4.

Oracle has already been granted a 30-day streamlined extension of time to file its answering brief (ECF No. 28), and there is no longer any possible basis for a further extension of time. The Court should therefore deny Oracle's motion to extend the deadline to file its answering brief (ECF No. 22.1).

Respectfully submitted,

/s/ Blaine H. Evanson

Blaine H. Evanson  
Attorney for Appellants

cc: All Counsel of Record (via ECF)

# **Exhibit A**

1

2

3 UNITED STATES DISTRICT COURT

4

DISTRICT OF NEVADA

5

\* \* \*

6

ORACLE INTERNATIONAL  
CORPORATION, *et al.*,

Case No. 2:14-cv-01699-MMD-DJA

7

ORDER

8

Plaintiffs,

9

v.

10

RIMINI STREET, INC., *et al.*,

Defendants.

11

12 This was a software copyright and unfair competition dispute between Plaintiffs  
13 and Counter Defendants Oracle America, Inc., and Oracle International Corporation  
14 (collectively, “Oracle”) and Defendants and Counter Claimants Rimini Street, Inc., and  
15 Seth Ravin (collectively, “Rimini”) generally regarding Rimini’s unauthorized copying of  
16 Oracle’s enterprise software into and from development environments created by Rimini  
17 for its clients, along with disputes regarding allegedly false statements in marketing and  
18 advertising and unfair competition. (ECF Nos. 1253 at 2, 1305 at 12-13.) Following a  
19 bench trial, the Court mostly—but not entirely—found in Oracle’s favor and entered a  
20 permanent injunction against Rimini. (ECF Nos. 1536 (“Bench Order”), 1537 (the  
21 “Injunction”), 1538 (“Judgment”).) The Court later awarded Oracle attorneys’ fees. (ECF  
22 No. 1610.) Rimini appealed the attorneys’ fees order, and that appeal remains pending.  
23 (ECF No. 1612.) The United States Court of Appeals for the Ninth Circuit then vacated  
24 part of the Bench Order and the portions of the Injunction Rimini appealed in a published  
25 opinion in the end of 2024. (ECF No. 1617 (the “Opinion”).) Before the Court is Oracle’s  
26 motion for an indicative ruling regarding Rimini’s appeal of the attorneys’ fees order. (ECF  
27  
28

1 No. 1618 (“Motion”).)<sup>1</sup> Because Oracle does not seek any relief in its Motion, and as  
2 further explained below, the Court will deny the Motion.

3 Oracle brings its Motion under Fed. R. Civ. P. 62.1. (ECF No. 1618 at 7.) “[T]he  
4 filing of a notice of appeal generally divests the district court of jurisdiction over matters  
5 appealed[.]” *Pro Sales, Inc. v. Texaco, U.S.A.*, 792 F.2d 1394, 1396, n.1 (9th Cir. 1986).  
6 But Rule 62.1 provides that, “[i]f a timely motion is made for relief that the court lacks  
7 authority to grant because of an appeal that has been docketed and is pending, the court  
8 may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would  
9 grant the motion if the court of appeals remands for that purpose or that the motion raises  
10 a substantial issue.” Fed. R. Civ. P. 62.1(a).

11 Oracle argues an order from this Court about the impact of the Opinion on the fees  
12 order it entered would be judicially efficient and otherwise urges the Court to affirm that  
13 the fees order remains warranted and correct even in view of the Opinion. (ECF No. 1618  
14 at 8-10.) Said otherwise, Oracle asks the Court to proclaim that it would maintain the  
15 status quo, if it could, seeing as how the propriety of the fees order is currently before the  
16 Ninth Circuit. Rimini counters in pertinent part that “Rule 62.1 allows a court to issue an  
17 indicative ruling *only* when a “motion is made *for relief* that the court lacks authority to  
18 grant” due to a pending appeal. (ECF No. 1624 at 6 (quoting Fed. R. Civ. P. 62.1(a))  
19 (emphasis in Rimini’s brief).) The Court agrees with Rimini.

20 “Courts are split as to whether a party seeking a ruling under Rule 62.1 must also  
21 file an accompanying predicate motion that the district court lacks authority to grant.”  
22 *Index Newspapers LLC v. City of Portland*, No. 3:20-CV-1035-SI, 2022 WL 72124, at \*1  
23 (D. Or. Jan. 7, 2022) (citation omitted). The *Index Newspapers* Court then identified the  
24 courts on each side of the split as: those that require an accompanying predicate motion,  
25 such as a motion under Fed. R. Civ. P. 60(b), and those that accept a “freestanding” Rule

26  
27 

---

<sup>1</sup>Rimini responded (ECF No. 1624) and Oracle replied (ECF No. 1625), but then  
28 filed a notice of corrected image of its reply (ECF No. 1626).

1 62.1(a) motion if the moving party sufficiently states the merits of its substantive argument  
2 in its briefs." *Id.* at \*1-\*2 (citation omitted). The *Index Newspapers* court then went on to  
3 follow the "freestanding" approach and address the merits of a motion for indicative ruling  
4 to dissolve an injunction, which, while it was not accompanied by a predicate motion,  
5 contained "argument and authority supporting the merits of their position that the  
6 preliminary injunction should be dissolved." *Id.* at \*2.

7 Oracle did not file an accompanying predicate motion with its Motion and presents  
8 the Court with a different situation than the *Index Newspapers* court faced because Oracle  
9 asks the Court to affirm the ongoing validity of its fees order. Indeed, Oracle's Motion  
10 effectively presents the opposite of the *Index Newspapers* situation because Oracle is  
11 asking the Court to reaffirm the validity of an order instead of dissolving an injunction or  
12 otherwise modifying an order the Court has already entered—if it could. Were the Court  
13 to take the predicate motion approach, the Court could deny the Motion simply because  
14 Oracle did not file a predicate motion. But even if the Court takes the freestanding motion  
15 approach, the Court will still not grant the Motion because Oracle does not seek the relief  
16 contemplated by Rule 62.1—it seeks to maintain the status quo.

17 As Rimini points out, the plain text of Rule 62.1(a) supports this view. (ECF No.  
18 1624 at 15.) The Rule only permits the Court to issue an indicative ruling "[i]f a timely  
19 motion is made for relief that the court lacks authority to grant because of an appeal that  
20 has been docketed and is pending[.]" Fed. R. Civ. P. 62.1(a). The Court lacks authority  
21 to vacate the fees order at this time because Rimini appealed it. (ECF No. 1612.) See  
22 also *Pro Sales, Inc.*, 792 F.2d at 1396 n.1. But Oracle is not asking the Court to vacate  
23 or modify the fees order if it could—it is asking the Court to reaffirm that it would still enter  
24 the fees order unchanged, today, even considering the Opinion. (ECF No. 1618.) Oracle  
25 is accordingly not asking the Court for any relief that would permit the Court to issue an  
26 indicative ruling. See Fed. R. Civ. P. 62.1(a).

27 ///

28

1       In addition, a treatise author who has considered *Index Newspapers* shares a  
2 consistent view that a court may only grant a motion for indicative ruling if the moving  
3 party seeks “specific and concrete requests for relief,” as opposed to a motion animated  
4 “by a party’s mere curiosity about what the trial court might or might not think about a  
5 matter on appeal.” *Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a*  
6 *Pending Appeal*, 2 Federal Rules of Civil Procedure, Rules and Commentary Rule 62.1  
7 (Steven S. Gensler, February 2024 Update) (citing *Index Newspapers* in a footnote  
8 immediately preceding the quoted sentence). Professor Gensler continues:

9  
10     Rather, these cases [including *Index Newspapers*] are properly read as  
11 saying that, when a party files a single document that both seeks indicative  
12 relief and specifies the substantive relief sought and the grounds supporting  
13 it, the court may treat the motion as both a substantive motion and a Rule  
14 62.1 motion. This is a sensible solution to the situation; the alternative would  
15 be to deny the motion as procedurally improper and await the re-filing of  
16 physically separate documents. But it is important to emphasize that this  
17 solution is available only when the unitary motion contains all of the content  
18 required for a proper substantive motion.

19  
20     *Id.* The Court shares Professor Gensler’s view. Indeed, Oracle’s Motion could fairly be  
21 characterized as one in which Oracle does not seek specific or concrete relief, but instead  
22 reflects nothing more than Oracle’s understandable curiosity about what might happen to  
23 the substantial attorneys’ fees order it won. (ECF No. 1618 at 7-8 (“An indicative ruling  
24 stating this Court’s views as to how the Fees Appeal should proceed in light of the  
25 December 16, 2024 Merits Opinion would be judicially efficient.”).)

26     In sum, the Court exercises its discretion under Rule 62.1(a)(2) to deny Oracle’s  
27 Motion as procedurally defective.

28     The Court notes that the parties made several arguments and cited to several  
29 cases not discussed above. The Court has reviewed these arguments and cases and  
30 determines that they do not warrant discussion as they do not affect the outcome of the  
31 Motion.

1 It is therefore ordered that Oracle's motion for indicative ruling (ECF No. 1618) is  
2 denied.

3 DATED THIS 21<sup>st</sup> Day of April 2025.

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE